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Date: December 09, 2004

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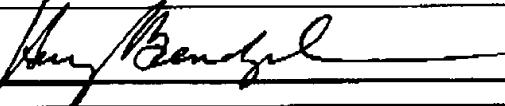
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Re: Serial No: 09/700,522 **Pages:** Cover + 4

Henry Brendzel

TRANSMITTAL FORM (to be used for all correspondence after initial filing)		<i>Complete if Known</i> Application Number 09/700,522 Filing Date 11/15/2000 First Named Inventor David A. Kapilow Examiner Name V. Paul Harper Group/Art Unit 2654	
		RECEIVED CENTRAL FAX CENTER DEC 09 2004	
Total number of pages in this Submission: this page, plus		3	Attorney Docket ID Kapilow 1999-0098A

ENCLOSURES (check all that apply)			
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Kapilow 1999-0096A

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Patent Application

Inventor(s)	David A. Kapilow	Case Name	Kapilow 1999-0096A
Filing Date	11/15/2000	Serial No.	09/700,522
Examiner	V. Paul Harper	Group Art Unit	2654
Title	Method and Apparatus for Performing Packet Loss or Framer Erasure Concealment		

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SIR:

AMENDMENT REMARKS

This is in response to an Office action dated September 20, 2004.

Claims 1 and 2 were provisionally rejected under the judicially created doctrine of obvious-type double patenting as being unpatentable over claim 1 of copending application No. 09/700,524 in view of Chen, US Patent 5,615,298. Applicant respectfully traverses.

First, a provisional rejection may be applied based on an earlier filed, copending, unpublished application. MPEP 706.02(f)(2). Since the '524 copending application was filed on the same day as the instant application, it is not an earlier filed application and, therefore, it is not subject to a provisional rejection in view of the '524 application.

Additionally, it is respectfully submitted that the rejection is at least premature. Even without addressing the merits of the Examiner's assertion as to obviousness:

- (a) it is not known whether the '524 application will issue,
- (b) Even if the '524 application issues, it is not known whether the Examiner will even wish to assert obviousness, or is asserted, whether the Examiner is correct in such an assertion, and
- (c) it is not known which application will issue first.